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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/170624

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 08, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on January 12, 2016.

The issue for determination is whether eligibility for the Family Care Program (FCP) may be backdated prior to the date an individual is enrolled in the program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], IM Specialist Adv.  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 16, 2015 petitioner applied for Elderly, Blind or Disabled (EBD) MA. Exhibit 5. She was found eligible for EBD MA effective July 20, 2015.

3. On August 27, 2015 petitioner applied for Family Care. Exhibit 6. Petitioner's application was processed thereafter and she was enrolled into the Family Care program effective October 1, 2015.

### **DISCUSSION**

Wisconsin Medicaid is a state/federal program that provides health coverage for Wisconsin residents who are elderly, blind, or disabled or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. There are different subprograms of Medicaid, one of which is the Family Care Program (FCP). The FCP, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The FCP rules state that:

Any person may apply for a family care benefit on a form prescribed by the department and available from a resource center. Application shall be made to the agency serving the county, tribe or family care district in which the person resides. Application may not be made to an agency in a county or tribe in which the family care benefit is not available.

Wis. Adm. Code §DHS 10.31(4)(a).

And:

Except as provided in par. (b), as soon as practicable, but not later than 30 days from the date the agency receives an application that includes at least the applicant's name, address, unless the applicant is homeless, and signature, the agency shall determine the applicant's eligibility and cost sharing requirements for the family care benefit, using a functional screening and a financial eligibility and cost-sharing screening prescribed by the department. If the applicant is a family care spouse, the agency shall notify both spouses in accordance with the requirements of s. 49.455 (7), Stats.

Wis. Adm. Code §DHS 10.31(6)(a).

The process contemplated for an applicant is to test her functional eligibility, then her financial eligibility, and if she meets both standards, to certify her as eligible. Then she is referred to a CMO for enrollment in the CMO. See Wis. Adm. Code, §§DHS 10.33 – 10.41. The CMO then drafts a service plan using CMO selected providers, designing a care system to meet the needs of the person, and the person executes the service plan. At that point the person's services may begin.

With regard to the start date, Wis. Adm. Code, §DHS 10.36(1), provides that a person who meets all conditions of eligibility is entitled to enroll in a CMO. §DHS 10.36(2) provides that entitlement to the FCP benefit first applies on the effective date of the contract between the CMO and the applicant. Further, §DHS 10.36(3) provides that an eligible person may purchase services privately from the CMO "while waiting for enrollment."

The petitioner's son/POA testified that they had applied for the FCP in July and that there was "some coding error" that occurred which caused petitioner to be found eligible for EBD MA instead of the FCP. Petitioner requests that the FCP eligibility be backdated accordingly.

First, there is no evidence that petitioner applied for FCP prior to August 27, 2015. It appears that petitioner's son/POA may have been confused about which MA program he was applying for in June. And given the complexities in navigating the "MA world", it is understandable. However, the evidence shows that he clearly applied for EBD-MA in June and for which petitioner was found eligible. The agency has clearly developed a form prescribed by the department to apply for FCP, and that was not submitted until August, which was then processed. The CMO then enrolled petitioner on October 1, 2015.

Unfortunately for petitioner, there is no provision for backdating CMO responsibility prior to enrollment. Until enrollment, the person must privately pay. The statute, rule, and the *Medicaid Eligibility Handbook (MEH)* are clear as to the requirement that a recipient must be enrolled in a CMO in order to receive Family Care benefits:

- (a) Subject to par. (c), a person is entitled to and may receive the family care benefit through enrollment in a care management organization if all of the following apply:

...

- (c) Within each county and for each client group, par. (a) *shall first apply on the effective date of a contract under which a care management organization accepts a per person per month payment to provide services under the family care benefit to eligible persons in that client group in the county.* Within 36 months after this date, the department shall assure that sufficient capacity exists within one or more care management organizations to provide the family care benefit to all entitled persons in that client group in the county.

Wis. Stat. §46.286(3)(a) and (c)(emphasis added).

**DHS 10.41 Family care services.** (1) ENROLLMENT REQUIRED. The family care benefit is available to eligible persons only through enrollment in a care management organization (CMO) under contract with the department.

Wis. Admin. Code §DHS 10.41(1).

Medicaid eligibility begins the first day of the month in which the valid application is submitted and all program requirements are met with the following exceptions. Those begin dates are the date a valid application is submitted, all program requirements are met, and: ... Family Care and PACE or Partnership – The date the individual is enrolled in the MCO.

*MEH* §2.8.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

Additionally, the ALJs in the Division of Hearings and Appeals do not possess equitable powers. *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540,545 (E.D. Wis. 1977). We are limited to a review of the law as set forth in statutes, federal regulations, and administrative code provisions, and are without the power to grant the petitioner any equitable relief. Thus, I cannot take the action petitioner requests because it might be fair or because he may have relied on some worker's incorrect advice. This Division has consistently ruled that there is no legal authority to "backdate" the CMO enrollment date. *E.g.*, DHA Final Decision No. FCP-40/52227 (Wis. Div. of Hearings & Appeals April 15, 2002)(DHFS).

As there is no provision in the rules for backdating CMO responsibility prior to enrollment, I cannot grant the relief requested. Rather, petitioner can seek relief in a circuit court of this State. In addition, I am bound by the Secretary's decision in FCP-40/55295. Because there is not an adequate remedy available

under the state statutes, administrative code or Family Care policy for this circumstance, the petitioner's request for retroactive Family Care coverage is denied.

### **CONCLUSIONS OF LAW**

The petitioner's FCP eligibility cannot begin before the date of CMO enrollment, which was October 1, 2015.

**THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

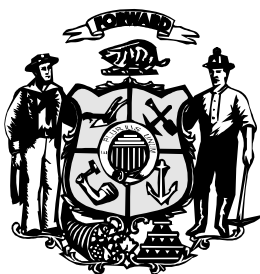
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of February, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 10, 2016.

Milwaukee Enrollment Services  
Office of Family Care Expansion  
Health Care Access and Accountability